TAHAP WARISAN SDN BHD

v.

LIM YOKE TIANG

HIGH COURT MALAYA, SHAH ALAM
HADHARIAH SYED ISMAIL J
[CIVIL SUIT NO: 23NCVC-9-05-2012]
23 JANUARY 2013

TORT: *Defamation - Defamatory statements - Letters to third parties - Whether words complained in letters were defamatory of plaintiff - Whether words referred to plaintiff - Whether words published - Whether alleged defamatory letters written with malice - Whether defence of justification and qualified privilege available to defendant*

The plaintiff entered into a joint venture agreement with Perbadanan Kemajuan Negeri Selangor ('PKNS') for a development project located in Pusat Bandar Shah Alam ('the JVA'). The plaintiff appointed the defendant as a consultant architect to provide architectural consultancy services for the development project. The defendant's scope of works and remuneration were contained in two documents signed by both parties, namely a fee agreement and a letter of appointment. Based on the letter of appointment, the remuneration agreed between the parties for the scope of works was RM1.5 million. During the period of the defendant's consultancy, the defendant had submitted nine progress claims to the plaintiff and all these progress claims had been paid in full by the plaintiff. As the project progressed, the defendant was dissatisfied with the payments made by the plaintiff. The defendant alleged that any amendment to the development plan requested by the plaintiff meant extra works which required additional payments. The defendant argued that based on the architect's scale of fees, the amount of fees due and payable by the plaintiff should be RM14,816,943.65. However, only the sum of RM500,000 was paid, leaving a balance sum of RM14,316,943.65 being unpaid and outstanding. There were numerous letters written by the defendant to the plaintiff for the payment but the request was turned down by the plaintiff. The defendant then suspended his consultancy services not amounting to termination with effect from 18 July 2010. On 13 September 2010, the plaintiff terminated the defendant's services. After the termination, the defendant received two letters from Majlis Bandaraya Shah Alam ('MBSA') informing the defendant that the building plan had been given a conditional approval subject to the defendant complying with certain additional requirements. As the defendant had already suspended his services since 18 July 2010, he did not reply to this letters. Thereafter, MBSA wrote to the

defendant another letter informing him that his application for approved building plan had been cancelled for failure to comply with certain conditions. This time, the defendant replied to MBSA's letter *via* letter dated 15 December 2011 which was carbon copied to one En Othman bin Hj Omar, the General Manager of PKNS and one Puan Norzila Sidek of PKNS. The defendant also wrote another letter dated 28 December 2011 to PKNS and enclosed the alleged first defamatory letter for their information ('the alleged defamatory letters'). In the letter dated 15 December 2011 written by the defendant to MBSA, the defendant stated that 'oleh kerana pertikaian fi dengan pemaju itu yang ingin mengada-adakan pindaan tanpa batasan dan tanpa bayaran fi yang setimpalnya, pihak kami telah terpaksa melepaskan kerja-kerja itu'. The plaintiff argued that the said letters were defamatory in nature as the crux of the defendant's complaint in both the alleged defamatory letters were that the plaintiff owed the defendant a substantial amount of fees and that the plaintiff asked for unlimited amendments to their development project. On the contrary, the plaintiff contended that MBSA's letters never asked for a reply from the defendant and that the defendant wrote the reply letter dated 15 December 2011 on his own volition and maliciously. The issues that arose for determination were: (i) whether the words complained in the alleged defamatory letters were defamatory of the plaintiff; (ii) whether the words referred to the plaintiff; (iii) whether the words were published; (iv) whether the alleged defamatory letters were written with malice; and (v) whether the defence of justification and qualified privilege were available to the defendant.

Held (allowing plaintiff's claim with costs):

(1) The defendant merely requested for his fees to be reviewed to a higher rate. The sum of RM14,316,943.65 was a self service statement and was not proved to be paid by the plaintiff. The defendant's claims had been paid in full by the plaintiff and there was no fresh claims made by the defendant. Since the sum of RM14,316,943.65 according to the architect scale of fees was yet to be proved, the defendant's statement that the plaintiff owed him a substantial amount of fees was not true. It was premature and inaccurate for the defendant to say that the said sum was due and payable by the plaintiff. (para 26)

(2) Given its ordinary meaning of 'mengada-adakan pindaan tanpa batasan', these words mean that the amendments were unlimited and frivolous. However, the amendments were done in compliance with the instruction of the local authorities. The plaintiff did not blindly make the amendments with the purpose to cause hardship to the defendant and to delay the project. The defendant failed to

explain how the amendments were said to be unnecessary, troublesome or a nuisance. Therefore, the statements "mengada-adakan pindaan tanpa batasan" was not true. The combined effect of these untrue statements was it had a tendency to lower the reputation of the plaintiff in the eyes of those to whom they were published. This was sufficient to constitute defamation. (paras 27 & 28)

(3) There was no necessity for the defendant to write the first alleged defamatory letter because MBSA's letter of 23 November 2011 did not request for a reply from the defendant. Likewise, either MBSA or PKNS had no interest in the dispute between the plaintiff and the defendant. The two alleged defamatory letters were actuated by malice on the part of the defendant to cause hatred to the plaintiff. On those grounds, the words complained of in both the offending letters bore defamatory imputations. (para 31)

(4) It was not disputed that the first and second alleged defamatory letters referred to the plaintiff since the plaintiff's name, Tahap Warisan Sdn Bhd was mentioned in both the letters. Further, with the defendant's admission that the two alleged defamatory letters were sent to one Othman bin Hj Omar, the General Manager of PKNS and one Norzila Sidek of PKNS, the publication had been proved. The recipients of the letters were third parties. Once publication was proved, it was irrelevant whether the letters reached the named persons only or any other person. (paras 32 & 35)

(5) The defendant had used extremely harsh and abusive language in its correspondence with the plaintiff. The defendant also had no reservations in copying the first and second alleged defamatory letters to the third parties. It clearly showed that the first and second alleged defamatory letters were written with malice on the part of the defendant. Since the defendant admitted writing the letters, the plaintiff was entitled to refer to the letters to show the state of mind of the defendant who was angry with the plaintiff for not paying his fees according to the rate requested. In all the letters, the defendant wanted to cause hatred to the plaintiff. Hence, malice was proved. (para 39)

(6) The defendants had not proved that there was substantial fees owed by the plaintiff to the defendant. Therefore, the defendant's defence of justification failed. There was no corresponding interest on the part of PKNS and MBSA to receive the words complained of. The dispute between the plaintiff and the defendant was a private dispute which need not be told to a third party. The defence of qualified privilege was also defeated with the proof of malice on the part of the defendant. (paras 40-42)

Case(s) referred to:

Anne Lim Keng See v. The New Straits Times Press (M) Bhd & Anor and Other Appeals [2008] 6 CLJ 697 CA ***(refd)***

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Bumiputra-Commerce Bank Bhd v. Top-A Plastic Sdn Bhd [2008] 5 CLJ 737 CA ***(refd)***

Dato' Mohamad Salim Fateh Din v. Nadeswaran Rajah [2013] 4 CLJ 961 HC ***(refd)***

Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 5 CLJ 301 HC ***(refd)***

Dato' Wan Hashim Wan Daud v. Mazlan Ibrahim & Anor [1997] 5 CLJ 140 HC ***(refd)***

Datuk Seri Utama Dr Rais Yatim v. Amizudin Ahmat [2011] 1 LNS 1441 HC ***(refd)***

Kesatuan Kebangsaan Pekerja-Pekerja Bank & Ors v. The New Straits Times Press (Malaysia) Bhd & Ors and Another Case [2013] 3 CLJ 700 HC ***(refd)***

Lee Thye v. Daniel Siew Yong Loong [2013] 10 CLJ 383 HC ***(refd)***

Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 3 CLJ 310 CA ***(refd)***

S Pakianathan v. Jenni Ibrahim & Another Case [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC ***(refd)***

For the plaintiff - David Lai (Alex Cheng & Lai Chee Hoe with him); M/s Chee Hoe & Assocs

For the defendant - Jane Pragasam (Mary Anne with her); M/s Ho-Noecker & Pragasam

Reported by Sandra Gabriel

JUDGMENT

Hadhariah Syed Ismail J:

Introduction

[1] The plaintiff, a developer sued the defendant, an architect registered with the Pertubuhan Arkitek Malaysia and practicing under YTT Architect, for libel and claimed for general damages and injunction together with interest and costs on a full indemnity basis. The defendant, in his defence has raised the defence of justification and qualified privilege asserting that the alleged defamatory statements are true and/or fair comments and therefore the alleged defamatory statements were not defamatory.

Facts

[2] On 31 March 2005, the plaintiff entered into a joint venture agreement with Perbadanan Kemajuan Negeri Selangor (PKNS), the landowners, to develop Precint 4.3, 4.4 and 4.5 Seksyen 14, Pusat Bandar Shah Alam (the JVA). The plaintiff then appointed the defendant as a consultant architect to provide architectural consultancy services for the project known as "Cadangan Pembangunan Bercampur Secara Penswastaan Di Lot Precint 4.3, 4.4 & 4.5 Persiaran Damai, Seksyen 14, Pusat Bandar Shah Alam Untuk Tahap Warisan & PKNS" (the project). The defendant's scope of works and his remuneration are contained in the following two documents signed by both parties, namely:

(i) Fee agreement dated 17 September 2008; and

(ii) Letter of appointment dated 24 April 2009.

[3] Based on the letter of appointment dated 24 April 2009, the remuneration agreed between the parties for the scope of works is RM1.5 million. The letter of appointment was accepted and signed by the defendant on 8 July 2009. This letter of appointment later became a contentious issue because the defendant said that he disagreed with RM1.5 million and that the said letter was meant for stage three works only. This issue will be dealt with at the appropriate moment.

[4] The project is to be completed by 31 March 2010. The defendant at the material time knew of the existence of the plaintiff's joint venture with PKNS but was not informed nor made aware of the terms of the JVA by the plaintiff. During the period of his consultancy, the defendant has submitted nine progress claims to the plaintiff. All these progress claims have been paid in full by the plaintiff and the total sum paid is RM595,000. This fact is admitted by the defendant. As the project progresses, the relationship between the parties became sour. The dispute relates to the defendant's work performance and payment of his fees. The defendant alleged his fees is based on the work done and to be computed according to the Architect (Scale of Minimum Fees) Rules 1986. Thus, the defendant is not satisfied with the piecemeal payment made by the plaintiff. According to the defendant, under the Architect Scale of Fees, he is to be paid a higher amount of fees to commensurate with the works he had carried out. He further alleged that any amendment to the development plan requested by the plaintiff means extra works for him and required additional payments. There were numerous letters written by the defendant to the plaintiff, requesting for payment of his fees. The request was turned down by the plaintiff. The

A defendant informed the plaintiff that he would be suspending his consultancy services not amounting to termination with effect from 18 July 2010 until the dispute is settled between the parties. Parties start blaming each other. The plaintiff contends that:

B (i) The defendant has failed to perform his scope of works and/or failed to carry out his work satisfactorily and/or there were a large number of defects in the designs of the defendant;

(ii) The defendant has failed to adhere to the time line imposed by the joint venture agreement;

C (iii) The defendant continued to be absent at meetings without reason on 27 July 2010; 2 August 2010; 3 August 2010; 4 August 2010; 25 August 2010 and 1 September 2010;

(iv) The defendant did not respond to the plaintiff's letter; and

D (v) The defendant's fees is paid in accordance to the letter of appointment and all his claim has been paid in full. There is no outstanding fees owed by the plaintiff to the defendant.

E **[5]** The defendant denied all the plaintiff's allegation. His pleaded case is he had suspended his services for the following reasons:

(i) The plaintiff owed him a substantial amount of fees; and

(ii) The plaintiff keep on changing the building plan.

F **[6]** The dispute persisted. On 13 September 2010, the plaintiff terminated the defendant's services and issued a formal complaint to Lembaga Arkitek Malaysia on 14 September 2010. The plaintiff also requested for a letter of release to appoint a new architect. The fee dispute has since been referred to arbitration. The arbitration commenced G in November 2010. On 15 November 2010, Lembaga Arkitek Malaysia (LAM) waived the requirement for a letter of release from the defendant since the matter has been referred to arbitration.

[7] As far as arbitration proceedings is concerned, the parties have filed their pleadings, putting all issues before the arbitration. The issues H raised include without limitation:

(i) The fees alleged to be outstanding from the plaintiff to the defendant;

I (ii) The termination of the defendant; and

(iii) The work carried out by the defendant in relation to the project.

[8] Mr David Lai for the plaintiff reminded me that issues raised by the defendant with regard to his outstanding fees and its quantum are matters to be decided by the arbitration and not by me. I fully agree with him. I know the issue before this court is whether the two offending letters are defamatory of the plaintiff. However, in resolving this issue, deliberation on the outstanding fees alleged to be owed by the plaintiff is unavoidable because unpaid fees appears to be the driving factor that led the defendant to write those letters.

[9] Post termination, the defendant received a letter dated 10 November 2010 from Majlis Bandaraya Shah Alam (MBSA) informing him that the building plan has been given a conditional approval subject to the defendant complying with certain additional requirements. As the defendant had already suspended his services since 18 July 2010, he did not reply to this letter. Subsequent to this, the defendant received another letter dated 25 March 2011 from MBSA informing the defendant that he has failed to comply with the additional requirements and therefore the defendant's application for approval has been rejected. Again, the defendant did not reply to this letter. These two letters were also carbon copied to the plaintiff and PKNS. Thereafter, MBSA wrote to the defendant another letter dated 23 November 2011 informing him that his application for approved building plan has been cancelled for failure to comply with certain conditions. This letter was carbon copied to Puan Norzila Sidek, Senior Manager, Business Development of PKNS and the plaintiff. This time, the defendant replied to the MBSA's 23 November 2011 letter *via* his letter dated 15 December 2011 which was carbon copied to En Othman bin Hj Omar, the General Manager of PKNS and Puan Norzila Sidek of PKNS. The defendant was asked as to why he replied to the said letter. His answer was the cancellation of the approved plan strikes at the heart of his reputation and image as a consultant architect. It is his evidence that he felt he need to explain the overall situation that led to the non-compliance of the conditions set. In other words the defendant does not want himself to be blamed or responsible for the rejection of the application for approved building plan. His answer was challenged by the plaintiff. The plaintiff says MBSA's letter of 23 November 2011 never asked for a reply from the defendant and that the defendant wrote the offending letter dated 15 December 2011 on his own volition and maliciously. Thus, whether there is a need to reply to the 23 November 2011 letter or not is a relevant issue because should the court find in favour of the plaintiff, the defendant had to proof his pleaded defence of qualified privilege. Therefore, it becomes relevant to see the contents of the 23 November 2011 letter. The letter reads as follows:

A Tarikh 23hb November 2011

Ar. Lim Yoke Tiang
Tetuan YTT Architect,
Suite C-9-1(C-9-6 & C-9-2)
Block C, Menara Uncang Emas
B Jalan Loke Yew
55200 Kuala Lumpur

Tuan,

C CADANGAN PINDAAN KEPADA PELAN LULUS (PKPL) MBSA/BGN/BB/600-1 (PS) SEK 14/C041-2008 BERTARIKH 30 APRIL 2009 BAGI CADANGAN PEMBANGUNAN BERCAMPUR YANG TERDIRI DARIPADA

PARSEL 1/FASA 1
D A. 1 BLOK PODIUM 5 TINGKAT TERMASUK MEZANIN DAN 1 BASEMEN

PARSEL 1/FASA 2

B. BLOK 1 PODIUM 5 TINGKAT TERMASUK MEZANIN DAN 1 BASEMEN
E DI ATAS PTA 46, JALAN IKHTISAS 14/3, SEKSYEN 14, PUSAT BANDARAYA SHAH ALAM, 40000 SHAH ALAM, SELANGOR DARUL EHSAN UNTUK TETUAN PERBADANAN KEMAJUAN NEGERI SELANGOR (PKNS) DAN TETUAN TAHAP WARISAN SDN BHD

F PEMBATALAN PERMOHONAN KELULUSAN PELAN BANGUNAN

Merujuk kepada perkara di atas permohonan tuan telah dikemukakan ke Jabatan Bangunan, Majlis Bandaraya Shah Alam no. ruj. MBSA/BGN/BB/600-2(PS)/SEK:14/0147-2010 bertarikh 7hb Jun 2010.

G 2. Dukacita dimaklumkan bahawa permohonan tersebut telah dibatalkan di atas sebab-sebab berikut:

☐ Pihak Majlis tidak menerima permohonan lengkap (linen) daripada pihak tuan dalam tempoh 14 hari bekerja seperti yang telah diberikan iaitu

H ☐ Permintaan pembatalan oleh pihak perunding/pemilik sendiri.
Catitan

☐ Arkitek Perunding/Pelukis Pelan yang dilantik telah dibatalkan pendaftarannya oleh Lembaga Arkitek Malaysia dan tidak layak untuk berurusan dengan MBSA. Tuan dikehendaki melantik Perunding yang
I baru jika inginkan tindakan lanjut dari pihak Majlis.

Lain-Lain:

√ 1. Permohonan tuan telah dibentangkan di dalam Mesyuarat Jawatankuasa Pusat Setempat bertarikh 8hb. November 2010 dan Jawatankuasa telah bersetuju untuk meluluskan permohonan tuan dengan syarat.

2. Walaubagaimanapun sehingga ke tarikh surat ini dikeluarkan pihak tuan masih gagal mematuhi syarat-syarat yang ditetapkan oleh Majlis seperti berikut:

2.1 Mendapatkan sokongan/kelulusan daripada Jabatan Perancangan MBSA

2.2 Mendapatkan sokongan/kelulusan daripada Jabatan Kejuruteraan (Awam dan Elektrik), MBSA

2.3 Mendapatkan sokongan/kelulusan daripada Jabatan Taman dan Rekreasi MBSA

2.4 Mendapatkan sokongan/kelulusan daripada Jabatan Bomba

2.3 Mendapatkan sokongan/kelulusan daripada Jabatan SYABAS

2.4 Mengemukakan permohonan lengkap kepada Jabatan Bangunan, MBSA

2.5 Mengemukakan permohonan baru ke Jabatan Pusat Setempat, MBSA

3. Dalam Mesyuarat Jawatankuasa Pusat Setempat yang bersidang pada 23hb. Mac 2011 telah bersetuju bahawa permohonan tuan bagi cadangan di atas dianggap terbatal dengan sendirinya kerana pihak tuan telah gagal untuk mematuhi syarat-syarat tersebut.

4. Pihak Majlis telah menjalankan pemeriksaan dan didapati tiada sebarang kerja-kerja pembinaan di tapak.

5. Pihak tuan perlu mengemukakan permohonan tuntutan pemulangan wang cagaran. Garis panduan permohonan boleh didapati di kaunter 1 Jabatan Bangunan. Sila buat tuntutan dalam tempoh 2 minggu dari tarikh surat ini dan sila sertakan resit asal.

Sekian, terima kasih.

"BERSAMA-SAMA KE ARAH KEGEMILANGAN"

Saya yang menjalankan tugas,

(HJH. ROSE ZAIRANI HJ. MARMUJI)
Pengarah Bangunan,
b.p. Datuk Bandar,
MAJLIS BANDARAYA SHAH ALAM

A s.k Puan Norzila Sidek
Pengurus Kanan Pembangunan Bisnes,
Tetuan Perbadanan Kemajuan Negeri Selangor (PKNS),
Persiaran Barat, Off Jalan Barat,
46505 Petaling Jaya,
SELANGOR DARUL EHSAN.

B
Pengarah Urusan
Tetuan Tahap Warisan Sdn Bhd
No. 14, Ground Floor,
Jalan Tengku Ampuan Zabedah G 9/G
Seksyen 9, 40100 Shah Alam,
C SELANGOR DARUL EHSAN.

(u.p.: Y. Bhg. Dato' Wong Goang Ching)

[10] The defendant wrote two letters dated 15 December 2011 (the first alleged defamatory letter) and 28 December 2011 (the second D alleged defamatory letter) respectively. Due to its relevance, I reproduced them below.

[11] The First Alleged Defamatory Letter

Ruj MBSA (Bangunan)	:	MBSA/BGN/BB/600-1(PS)/SEK: 14/0041-2008 (bertarikh: 18hb Nov 2008)
Ruj MBSA (Perancangan)	:	MBSA/PRG/KP/600-3/SEK:14/0065/2008
Ruj Kami	:	YTT/TW/B/03.090310/111215
Tarikh	:	15 Dec 2011

Pengarah
F JABATAN BANGUNAN
MAJLIS BANDARAYA SHAH ALAM
Tingkat 8, Wisma MBSA, Persiaran Perbandaran
40000, Shah Alam, Selangor Darul Ehsan

Tuan.

G
CADANGAN PINDAAN KEPADA PELAN LULUS (PKPL)
(MBSA/BGN/BB/600-1(PS) SEK: 14/0041-2008 BERTARIKH 30 APRIL 2009)
BAGI CADANGAN PEMBANGUNAN BERCAMPUR YANG TERDIRI DARIPADA:

H
PARSEL 1/FASA 1

...

SURAT PIHAK MBSA 23 NOV 2011 YANG MEMERLUKAN JAWAPAN KAMI
I (Yang diterima oleh kami pada 30 Nov 2011, melalui faks)

Dengan segala hormatnya saya merujuk kepada perkara di atas:

2) Kami ingin memaklumkan MBSA bahwa pihak kami dan Tetuan Tahap Warisan Sdn Bhd telah terlibat dalam Pertikaian TImbangtara Mengenai Fi; dan Lembaga Arkitek Malaysia telah mengecualikan surat perlepasan dari kami untuk Tetuan Tahap Warisan melantik arkitek baru menggantikan tempat kamu, dalam surat 28 Oktober 2010 (sila merujuk lampiran 3A).

3) Padahal permohonan Kelulusan Pelan Bangunan (Pindaan) pada 6 Julai 2010 oleh kami dan susulan itu, pihak MBSA telah pada 26 Ogos 2010 mengesahkan "disokong".

4) Kami pada 24 Sept 2010 telah mengemukakan Rekod Foto-Foto Aktiviti Tapak Untuk tarikh 25 Mei 2010 & tarikh 13 Sept 2010.

5) Kami telah pada 2 November 2010 mendapatkan Kelulusan Pelan Bangunan Jabatan Bomba & Penyelamat Malaysia untuk menyokong mendapat kelulusan penuh Pelan Bangunan dari MBSA.

6) Kami ingin memaklumkan pihak MBSA bahwa sejak tahun 2006 sehingga tahun 2010, pihak kami telah dibawah arahan pihak pemaju, Tetuan Tahap Warisan Sdn Bhd, melaksanakan tugas dan telah memperolehi 8 (lapan) kelulusan yang lain.

...

7) Kami amat bersyukur kerana telah mendapat kerjasama pihak MBSA sekian lama itu, di mana kami telah mendapat ke semua kelulusan yang kami kerjakan; tetapi malangnya oleh kerana pertikaian fi dengan pemaju itu yang ingin mengada-adakan pindaan pindaan tanpa batasan dan tanpa bayaran fi yang setimpalnya, pihak kami telah terpaksa melepaskan kerja-kerja itu.

Sekian dimaklumkan dan diucapkan ribuan terima kasih

Yang Benar
YTT ARCHITECT

Ar. Lim Yoke Tiang
ARKITEK PROFESIONA:
No. Pendaftaran LAM: A/L 221

Salinan kepada:

PENGURUS BESAR
TETUAN PERBADANAN KEMAJUAN NEGERI SELANGOR/PKNS

PUAN NORZILA SIDEK
PENGURUS KANAN PEMBANGUNAN BISNES

EN TONG KIM ENG
TAHAP WARISAN SDN BHD

[12] The words complained of by the plaintiff is emphasised in bold.

[13] The plaintiff pleads that the words complained of in its plain and ordinary meaning means or understood to mean as follows:

(a) That the plaintiff had without reason requested for amendments to be made.

(b) That the plaintiff has not paid any fees to the defendant for services rendered.

(c) That the plaintiff had asked for amendments without limit to be carried out.

[14] Further and/or in the alternative, the plaintiff pleaded the words complained of are capable of giving the followings innuendo:

(i) The plaintiff has breached the term as to fees agreed between the parties.

(ii) The amendments sought by the plaintiff are unnecessary; and

(iii) The plaintiff has sought unreasonable amendments to be made and the defendant has carried out all the amendments requested by the plaintiff.

The Second Alleged Defamatory Letter

[15] The defendant also wrote another letter dated 28 December 2011 to PKNS, enclosing the alleged first defamatory letter for their information. The letter reads:

> Date: 28 Dec 2011
>
> PERBADANAN KEMAJUAN NEGERI SELANGOR
> No 02-25, Kompleks PKNS Shah Alam, Persiaran Tasik,
> 40505 Shah Alam,
> Selangor Darul Ehsan.
> Attn Y. Bhg. EN OTHMAN BIN HAJI OMAR
>
> CADANGAN PEMBANGUNAN DI ATAS LOT PRECINT 43, 44 & 45, JALAN IKTISAS 14/3, SECTION 14, SHAH ALAM PUSAT BANDARAYA SHAH ALAM, 4000 SHAH ALAM, SELANGOR DARUL EHSAN UNTUK TETUAN PERBANDARAN KEMAJUAN NEGERI SELANGOR (PKNS) DAN TETUAN TAHAP WARISAN SDN BHD.
> - WRITTEN DIRECTION FROM MBSA 23 NOV 2011
>
> May we refer to captioned matter and the appended documents, and as the previously appointed architect by your JV partner, M/S Tahap Warisan Sdn Bhd, we wish to draw your attention on the matter as

per the written directions from Majlis Bandaraya Shah Alam, for your record & reference:

2) We were engaged by Tahap Warisan Sdn Bhd to carry out the Proposed Development in 2005 and into 2010, and had duly carried works and obtained 7 (+1) approvals of:

...

3) And having done our due diligence in the above mentioned undertakings, substantial outstanding payment of our architect fees had been defaulted by Tahap Warisan Sdn Bhd.

4) Nothwithstanding item 3), the withdrawal & discharge of our architectural service was due to Tahap Warisan Sdn Bhd's misrepresentation & complaint to Lembaga Arkitek Malaysia, of which our letter of discharge had been waived, and the matter of outstanding fees is now in arbitration.

5) MBSA was duly notified in 2010 by Tahap Warisan Sdn Bhd's newly appointed architect in their new submission for further amendment converting to SOHO.

However as the matter again raised by MBSA in their letter of 23 November 2011 to us, and with due respect, we ought to clarify in the light of the prevailing delay & failure of the project, that we wish to dissociate from that, as per our letter to MBSA dated 15 Dec 2011.

Trusting that the above is in order.

Yours truly,

YTT ARCHITECT
AR. YT LIM

With enclosure

CC: Perbandanan Kemajuan Negeri Selangor Attn: Y. Bhg. En. Othman bin Haji Omar

Pengurus Kanan Pembangunan Bisnes Attn: Pn. Norzila Sidek

[16] The words complained of by the plaintiff is emphasised in bold.

[17] The plaintiff pleads the words complained of in its plain and ordinary meanings are understood to mean as follows:

(i) The plaintiff owes the defendant substantial architect fees.

(ii) The plaintiff has a habit of not making immediate payments to its consultant and/or contractors.

A (iii) The plaintiff runs its business in an unethical manner.

(iv) The plaintiff has misrepresented facts to the defendant.

(v) The plaintiff has caused the defendant to incur losses from such alleged misrepresentation.

B

(vi) The plaintiff has lodged a baseless complaint against the defendant to LAM.

(vii) The plaintiff has caused delay to the project.

C (viii) The plaintiff is not a credible developer and should be disassociated from others.

[18] The plaintiff further pleads that the words complained of in the second alleged defamatory letter are capable of giving the following innuendo:

D

(i) The plaintiff has breached the letter of appointment with the defendant.

(ii) The plaintiff did not remunerate to the defendant for work carried out by the defendant.

E

(iii) The plaintiff has caused delay to the project.

(iv) The plaintiff has caused unreasonable amendments to be carried out.

F **Libel**

[19] To succeed in their action, the plaintiff must satisfy three conditions as follows:

(a) The words are defamatory;

G

(b) The words refer to the plaintiff; and

(c) The words were published.

[20] As such, the plaintiff must prove:

H

(a) The alleged defamatory statement bears defamatory imputations;

(b) The alleged defamatory statement must refer to the plaintiff; and

(c) The alleged defamatory statement must have been published to a third person by the defendant.

I

Words Defamatory Of The Plaintiff

[21] In their pleadings, the plaintiff has alleged that the following passage in the first alleged defamatory letter to be defamatory to them:

> kami amat bersyukur kerana telah mendapat kerjasama pihak MBSA sekian lama itu, di mana kami telah mendapat kesemua kelulusan yang kami kerjakan; tetapi malangnya oleh kerana pertikaian fi dengan pemaju itu yang mengada-adakan pindaan tanpa batasan dan tanpa bayaran fi yang setimpalnya, pihak kami telah terpaksa melepaskan kerja-kerja itu.

[22] The plaintiff in their pleadings also alleged that the following passage in the second alleged defamatory letter to be defamatory to them:

> (3) and having done our due diligence in the above mentioned undertakings, substantial outstanding payment of our architect fees had been defaulted by Tahap Warisan Sdn Bhd.
>
> (4) Notwithstanding item 3), the withdrawal & discharge of our architectural service was due to Tahap Warisan Sdn Bhd's misrepresentation & complaint to Lembaga Arkitek Malaysia, of which our letter of discharge had been waived, and the matter of outstanding fees is now in arbitration.
>
> (5) ... and with due respect, we ought to clarify in the light of the prevailing delay and failure of the project, that we wish to disassociate from that, as per our letter to MBSA dated 15 Dec 2011.

[23] It is beyond doubt that the crux of the defendant's complaint in both the alleged defamatory letters are the plaintiff owed him a substantial amount of fees and the plaintiff asked for unlimited amendments. Therefore, before I proceed to examine whether the words complained of are defamatory of the plaintiff, I must first determine whether the statements are true or not. I shall deal with professional fees first.

[24] The plaintiff maintained their stand that there is no outstanding architect fees due and owing by the plaintiff to the defendant. The plaintiff, through their witnesses have established the following facts:

(i) The defendant's fees is paid in accordance with the terms contained in the letter of appointment and fee agreement. From 2005 to 2010, the defendant has submitted nine claims and he was paid in full. This fact is admitted by the defendant. After submitting his claim No. 9, the defendant has not made any fresh claim within the scope of the fee agreement and the letter of appointment.

(ii) What the defendant did was he sent letters to the plaintiff seeking to review his fees and that he expects a higher fees based on architect rules. Examples of the defendant's letters are:

(a) Letter dated 27 September 2010, wherein the defendant wrote "similarly the fees remuneration scale for performance requirements ought to be reviewed and restored accordingly".

(b) "We would be entitled to new fees for new additional works".

(c) "The rationales of additional works & additional remuneration expectation".

(d) "Expected remuneration for works carried out/done".

[25] On the other hand, the defendant said he disagree with a lump sum fee of RM1.5 million as stated in the letter of appointment. He took a stand that the letter of appointment is meant for stage three only. It is not disputed that the word "stage 3" is not mentioned in the letter of appointment. When pressed to show proof where in the said letter of appointment the word "stage 3" appears, his reply was the word stage 3 is implied. I reject this answer. The defendant could not be allowed to add in a new term unilaterally; especially when the fees have been agreed at RM1.5 million. If the defendant disagreed with RM1.5 million, he should not have signed the letter of appointment. Having signed the said letter of appointment, the defendant is bound by the terms contained therein. The defendant refused to accept this fact. Instead, to proof his point of substantial fees owed by the plaintiff, the defendant said, based on architect scale of fees, the amount of fees due and payable by the plaintiff to him is RM14,816,943.65. But he was paid RM500,000 only, leaving a balance sum of RM14,316,943.65 remain unpaid and outstanding. His explanation as to how he derived at the figure of RM14,816,943.65 are as follows:

Stage	Amount claimed	Payment Received	Balance Unpaid
Stage 1	RM5,418,484.12	RM185,000.00	RM5,233,484.15
Stage 2	RM4,527,718.32	RM240,000.00	RM4,287,718.32
Stage 3	RM4,870,741.18	RM110,000.00	RM4,760,741.18

[26] As mentioned earlier, whether it is true that RM14,316,943.65 is due and owing by the plaintiff to the defendant is a live issue before the arbitration. From the evidence, I can say the defendant merely request for his fees to be reviewed to a higher rate; that the sum of RM14,316,943.65 was a self service statement and was not proven to

be paid by the plaintiff. It is premature and inaccurate for the defendant to say RM14,316,943.65 is due and payable by the plaintiff. In my view if the amount claimed is RM14,816,934.65 but the amount paid is only RM500,000, it is as good as the defendant say the plaintiff did not pay his fees at all. With all his claim has been paid in full; there is no fresh claim and the sum of RM14,816,943.65 is yet to be proven, the defendant's statement that the plaintiff owed him a substantial amount of fees is not true.

[27] Moving on to the statement "mengada-adakan pindaan tanpa batasan. Given its ordinary meaning, these words mean the amendments were unlimited and frivolous. The plaintiff's general manager (PW2) has testified that this is not the case here. According to the PW2, the amendments were required by local authorities and for purposes of practicality. PW2 gave examples of the amendments made. The examples relates to amendments due to design default eg:

(a) The design has rendered that the shop units fronting a slope within 3 metres with all view blocked by the slope.

(b) Insufficient headroom at the access from car park to shop.

(c) Circulation of traffic within the car park and also access route from floors to floors not workable.

(d) Non accessibility of routes to the project site.

[28] The defendant, on the other hand has not explained and show to the court how the amendments were said to be unnecessary, troublesome or a nuisance. I accept the plaintiff's evidence that the amendments are necessary and were done in compliance with the instruction of the local authorities. In short there are reasons and purpose why amendments are done. It is extremely hard for me to believe the defendant's contention that the plaintiff blindly made the amendments with a purpose to cause hardship to the defendant and to delay the project. Therefore, again, I find the statements "mengada-adakan pindaan tanpa batasan" is not true. The combined effect of these untrue statements is it had a tendency to lower the reputation of the plaintiff in the eyes of those to whom they were published. This is sufficient to constitute defamation.

[29] The next question for me to consider is whether the words complained of above were defamatory of the plaintiff. The test to be applied is do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part. The plaintiff submits that the defamatory words complained of in the first and second alleged defamatory letters expose the plaintiff to hatred, ridicule or contempt in

the mind of a reasonable man. Plaintiff further submits that even if the words did not really lower the plaintiff in the estimation of those to whom they were published, a mere tendency to do so is sufficient to a finding of defamation.

[30] Counsel for the defendant submits the first and second alleged defamatory letters were not defamatory of the plaintiff. The defendant gave three reasons. First, both the offending letters were sent to MBSA in reply to MBSA's letter of 23 November 2011 and there was a need for him to do so. Second, the defendant say he sent the letters in good faith and without any intention of reflecting the plaintiff's reputation in any way. Third, a presumption of adverse inference ought to be drawn against the plaintiff for not calling PKNS and MBSA officers as witnesses to give evidence as to whether both the offending letters have lowered the plaintiff's reputation in their eyes.

[31] I disagree with the defendant's submission. It is not necessary for the plaintiff to call the recipients of the two offending letters to testify as to the meaning of the words complained of. The standard of opinion applied is that of a right thinking persons generally or the standard of a reasonable person with ordinary intelligence. In this case, I am incline to agree with the plaintiff that the two alleged defamatory letters was intended to portray firstly, the plaintiff is a developer who is oppressive towards its consultant in that ordering its consultant to do limitless work without paying the fees or appropriate fees. Secondly, the plaintiff had a tendency of making false statements or accusation. Thirdly, the plaintiff is an unethical developer that ought to be disassociated with. I further disagree with the defendant that he wrote both the letters in good faith. In the first place, there is no necessity at all for the defendant to write the first alleged defamatory letter because MBSA's letter of 23 November 2011 did not request for a reply from the defendant. Likewise, either MBSA or PKNS had no interest in the dispute between the plaintiff and the defendant. They are not interested to know who is right or who is wrong. On the facts and circumstances of this case, it is my finding that the two alleged defamatory letters were actuated by malice on the part of the defendant to cause hatred to the plaintiff. On those ground, I hold the words complained of in both the offending letters bears defamatory imputations as pleaded by the plaintiff. Therefore, the first condition has been satisfied by the plaintiff.

Words Refer To The Plaintiff

[32] It is not disputed that the first and second alleged defamatory letters refer to the plaintiff. The plaintiff's name, Tahap Warisan Sdn Bhd was mentioned in both the letters. Hence, the second condition also has been satisfied.

Publication

[33] In law, to constitute publication, the defamatory matter must be published to a third person other than the plaintiff; see *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321. This principle basically require the making known of the defamatory matter after it has been written to some person other than the person to whom it is written; see *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233. Again, the defendant admitted that the first and second alleged defamatory letters were copied to a third party, namely the general manager of PKNS, Puan Norzila Sidek and En Othman bin Hj Omar. However, the defendant sought to contain the publication of the alleged defamatory letters to only the persons named as recipients in the said letters. Learned counsel for the defendant further submits the alleged defamatory letters were sent personally to the named persons in a sealed envelope and as such the plaintiff failed to prove publication. I find this submission is inaccurate. Learned counsel has not taken the defendant's evidence in its full context. As far as publication is concerned, the defendant has testified as follows:

(i) The first alleged defamatory letter was sent to Puan Norzila Sidek and general manager of PKNS by hand by his project manager.

(ii) The second alleged defamatory letter was sent to Encik Othman bin Hj Omar and Puan Norzila Sidek, both of PKNS, by hand through his project coordinator.

(iii) Both the project manager and project coordinator referred to in the defendant's testimony is his brother Lim Yeok Tooh.

(iv) Both the alleged defamatory letters were sent to the office of the listed recipients and not the recipients personally. In fact, the defendant further said that the secretary of Puan Norzila Sidek and the general manager of PKNS had provided an acknowledgement of receipt of those letters.

[34] Arising from the above testimony, learned counsel for the plaintiff submits:

(a) Publication of the first and second alleged defamatory letters has taken place notwithstanding that they were sent by hand personally to the listed recipients. Publication to one person other than the person defamed would constitute sufficient publication.

(b) The person who sent the letters is his brother. Thus, the defendant has no personal knowledge whether the said letters were delivered in a sealed envelope. His testimony is hearsay and carry no weight at all.

(c) Lim Yeok Tooh was not called to testify. As such, counsel for the plaintiff urges the court to draw adverse inference against the defendant for his failure to call Lim Yeok Tooh as a witness.

[35] I agree with the plaintiff's submission. With the defendant's admission that the two alleged defamatory letters were sent to the persons named therein, publication has been proven. The recipients of the letters are third party. Once publication is proved, it is irrelevant whether the letters reached the named persons only or any other person. After all, the defendant could not proved whether the said letters was hand delivered in a sealed envelope or not. He had no personal knowledge. If it is true that the letters were received by a secretary in a sealed envelope, the secretary will normally open the letter and read it first before handing it over to the recipients. Thus, I find the plaintiff has satisfied the third condition too.

Malice

[36] The plaintiff submits the two alleged defamatory letters were written with malice by the defendant. The dictionary meaning of malice was discussed by the Court of Appeal in the case of *Anne Lim Keng See v. The New Straits Times Press (M) Bhd & Anor and Other Appeals* [2008] 6 CLJ 697. In that case, the court held:

> What is malice? According to *Osborn's Concise Law Dictionary* (7th Edn.) the word "malice" means:
>
> > ill will or evil motive: personal spite or ill will is sometimes called actual malice, express malice, or malice in fact. In law, an act is malicious if done intentionally without just cause or excuse. So long as a person believes in the truth of what he says and is not reckless, malice cannot be inferred from the fact that his belief is unreasonable, prejudiced or unfair (*Horrocks v. Lowe* [1972] 1 WLR 1625). Malice in the law of tort is a constituent of malicious prosecution, defamation, malicious falsehood and conspiracy. But an act otherwise legal is not made wrongful by an improper motive (*Mayor of Bradford v. Pickles* [1895] AC 587).

[37] There appears to be a distinction between express malice and malice in law. It is only in cases of express malice, actual malice or malice in fact has to be pleaded and proven by the plaintiff; see *Dato' Wan Hashim Wan Daud v. Mazlan Ibrahim & Anor* [1997] 5 CLJ 140. Whereas for malice in law, malice may be presumed from the fact of the publication of defamatory words, so the plaintiff need not prove it. Based on the above authorities, the defendant contends the plaintiff did not plead the particulars of express malice. Therefore, the defendant

submit the plaintiff cannot bring in evidence of other letters to imply malice. On the principle of a party is bound by their pleading, the defendant also submit the plaintiff cannot introduce express malice through evidence at trial. *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 3 CLJ 310 was cited to support that proposition. The defendant further submit that the letters were not sent with malice or intention to defame the plaintiff based on the defendant's explanation that he wrote the letters in reply to MBSA's letter.

[38] The plaintiff alleged there was malice on the part of the defendant. The plaintiff relied on the following facts:

(i) At the time when the first and second alleged defamatory letters were published, the arbitration had already commenced and was pending. The dispute between the plaintiff and the defendant had already been referred to an arbitrator. There was no reason for the defendant to write the said letters.

(ii) Although the first alleged defamatory letter purportedly replies MBSA's letter dated 23 November 2011, a review of the said letter will reveal that nothing in the said letter either requesting or warranting a reply from the defendant.

(iii) There were no queries raised in MBSA's letter dated 23 November 2011. Nevertheless, the defendant said there was a mistake in the statement under "Lain-Lain". The point to note is the defendant is not in the position to say that there was a mistake in MBSA's letter as he was not the author of the same.

(iv) MBSA's letter dated 23 November 2011 was written and signed by one Hajah Rose Zairani Hj Marmuji. The defendant's testimony that the first alleged defamatory letter was written in reply to MBSA's letter of 23 November 2011 could not be true because the first alleged defamatory letter was not made to the attention of the said Hajah Rose Zairani. Instead, it was written to person other than Hajah Rose Zairani.

(v) Despite the contents of the second alleged defamatory letter, it was surreptitiously and deliberately not copied by the defendant to the plaintiff. The plaintiff was not listed as a recipient of a carbon copy of the said letter. This fact is admitted by the defendant.

(vi) The malice on the part of the defendant had manifested itself even in earlier correspondence issued by the defendant, whether to the plaintiff or otherwise. This can be seen in the extract of the following letters:

(a) By letter dated 2 Ogos 2010 to the plaintiff, the defendant had in fact said that the plaintiff was suffering from "mental block". The said letter was copied to Jurutera Perunding Primareka (JPPR), O&E (being the landscape architect) and TWA (the M&E Engineer).

(b) In the defendant's letter dated 7 September 2010 to the plaintiff, the defendant had said that the plaintiff treated the defendant as a slave. In the same letter, the defendant further said *inter alia* that the plaintiff had caused him to to work under duress for many years; the plaintiff had misled and treated the defendant unfairly; that the plaintiff was bent on its own self-devised; self-interpreted and self-righteous standings in an attempt to suppress the defendant. That letter was copied to LAM, PAM, JPPR and O&E.

(c) In a letter dated 9 September 2010, the defendant had said that the plaintiff resorted to fabrication and had suppressed and oppressed the defendant. The plaintiff was also called an unappreciative, abusive and overbearingly self righteous client. The said letter was copied to LAM, PAM, JPPR and O&E.

(d) In the defendant's letter dated 27 September 2010 to the plaintiff, the defendant again said that there was suppression or subjugation on the part of the plaintiff. The defendant had also said that the plaintiff used cunning interpretations to subjugate and to coerce compliances to secure performance by the defendant. The said letter was copied to LAM, PKNS and JPPR.

[39] I agree with the plaintiff's submission that in the instances mentioned above, the defendant had used extremely harsh and abusive language in its correspondence with the plaintiff. I also took note that the defendant has had no reservations in copying the letters referred to above to third parties. I further agree with the plaintiff that coupled with the sequence of correspondence referred to above, it clearly shows that the first and second alleged defamatory letters were written with malice on the part of the defendant. I reject learned counsel for the defendant's submission that the plaintiff is not entitled to refer to those letters because it was not pleaded. The defendant admits he wrote those letters. In my opinion, the plaintiff is entitled to refer to those letters to show the state of mind of the defendant who is angry with the plaintiff for not paying his fees according to the rate he requested. In all those letters, the defendant wanted to cause hatred to the plaintiff. On the totality of evidence, I hold that malice is proven.

Justification

[40] In raising the defence of justification, the defendant submits the alleged defamatory statements complained by the plaintiff were sent in good faith and merely narrates the true facts according to the defendant's belief and not defamatory. In view of my finding that it was not proven that there was substantial fees owed by the plaintiff to the defendant and there was malice on the part of the defendant, this defence must fail.

Qualified Privilege

[41] Qualified privilege means an occasion where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it; see *Lee Thye v. Daniel Siew Yong Loong* [2013] 10 CLJ 383. Relying on this principle, the defendant submits that the communication between the defendant, PKNS and MBSA are privileged because the defendant as the architect of the project has a legal and moral duty to inform MBSA and PKNS on the suspension of the defendant's services. The defendant further submits that PKNS being the land owners has a corresponding legal duty to receive the two alleged defamatory letters. I reject the defendant's submission as baseless. I find there is no corresponding interest on the part of PKNS and MBSA to receive the words complained of for the following reasons:

(a) The dispute between the plaintiff and the defendant with regard to the alleged outstanding fees is now pending arbitration. That dispute can only be resolved by an arbitrator.

(b) The dispute between the plaintiff and the defendant is a private dispute which need not be told to a third party.

(c) PKNS or MBSA had no power to compel the plaintiff to pay any outstanding fees to the defendant.

(d) Defence of qualified privilege is defeated with the proof of malice on the part of the defendant.

[42] Therefore defence of qualified privilege also must fail.

General Damages

[43] Having successfully established they were defamed, the plaintiff is entitled to the award of general damages. In claiming for general damages, the plaintiff submits that in an action for libel, the law

presumes that the plaintiff has suffered damage and there is no necessity for the plaintiff to show actual damage. In assessing the damages, I took into consideration the following matters:

(a) The negative remarks made by the defendant in all the correspondence.

(b) The stubbornness of the defendant in not acknowledging the letter of appointment which was signed by him and was never proven otherwise by evidence.

(c) The necessity of replying that letter despite a similar letter was issued much earlier which was not responded to.

(d) The necessity of replying that letter when no request was made.

(e) The necessity of issuing the defamatory letters to the recipient.

(f) The defendant's conduct in continuing to cast aspersions against the plaintiff after the publication of the defamatory remarks and during the trial.

(g) The defendant's conduct in continuing to justify the other negative remarks made in correspondence against the plaintiff.

(h) The concession and/or admission made before Justice Mohd Suffian.

(i) The undertaking made before Justice Mohd Suffian to provide:

(i) Letter of apology to the plaintiff.

(ii) Letter of undertaking not to issue any defamatory remarks.

(iii) Letter to retract both the defamatory letters.

(j) The non fulfillment of the undertaking made.

[44] I agree with the plaintiff that the amount of damages awarded should reflect the following aggravating factors:

(a) The position and standing of the plaintiff:

(i) The plaintiff is a reputable developer.

(ii) The plaintiff has several joint venture projects with PKNS.

(iii) The plaintiff no longer gets any projects from PKNS after the issuance of the defamatory letters.

(b) The sting of the impugned statement lies in an allegation of incompetent and irresponsible developer which is very serious in the eyes of PKNS.

[45] For the quantum, counsel for the plaintiff refers this court to the following cases:

(a) *Kesatuan Kebangsaan Pekerja-Pekerja Bank & Ors v. The New Straits Times Press (Malaysia) Bhd & Ors and Another Case* [2013] 3 CLJ 700; [2013] MLJU 41, wherein a sum of RM250,000 was awarded.

(b) *Datuk Seri Utama Dr Rais Yatim v. Amizudin Ahmat* [2011] 1 LNS 1441; [2012] 2 MLJ 807, a sum of RM300,000 was awarded as damages.

(c) *Dato' Mohamad Salim Fateh Din v. Nadeswaran Rajah* [2013] 4 CLJ 961; [2012] 10 MLJ 203, a sum of RM500,000 was awarded as damages.

(d) *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 5 CLJ 301; [2012] 2 MLJ 492, RM100,000 damages was awarded.

(e) *Bumiputra Commerce Bank Bhd v. Top A Plastic Sdn Bhd* [2008] 5 CLJ 737; [2008] 5 MLJ 34, RM500,000 damages was awarded.

[46] After taking into account the various factor listed above, I was of the view that RM250,000 is a fair and reasonable amount of damages. I therefore allowed the plaintiff's claim as prayed for in prayer 18 of the statement of claim as follows:

(a) Damages for libel - RM250,000.

(b) Interest 4% on RM250,000 from date of judgment till satisfaction.

(c) Injunction.

(d) Cost of RM35,000.